IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 763 of 2006

Date of decision: 14th December, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

iIN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 763 of 2006

1. Smt. Uma Devi w/o Late Sri Hari Ram
2. Master Ramesh Ram s/o Late Sri Hari Ram
3. Master Ganesh Ram s/o Late Sri Hari Ram
through their natural guardian mother
Smt. Uma Devi, all r/o Village Dhokali,
Patti Bhoutar, Tehsil Didihat,
District Pithoragarh. ……. Appellants

Versus

1. Shri Harish Chander Upadhyay
s/o Kripal Dutt Upadhyay
owner Vehicle No. UA 04 A-5217 Jeep
R/o Kholi Kanuri Patti Bhoutar,
Tehsil Didihat, District Pithoragarh.
2. The New India Assurance Company Ltd.
through Regional Manager, Regional Office,
Haldwani District Nainital ……. Respondents

……..

Sri Kishore Kumar, Advocate for the appellants.
None for respondent No. 1.
Sri M. K. Agarwal, Advocate on behalf of Sri R. B. Agarwal, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Pithoragarh vide Award dated 16.06.2006 passed in Motor Accident Claim Case No. 112 of 2004.

2. The claimants, who are unfortunate widow and children of deceased Hari Ram, claimed compensation of Rs. 7,88,000/- for his death in the motor accident on 07.03.2004 when the jeep bearing registration No. UA04A-5217, in which he was travelling to Didihat met with an accident on account of the rash and negligent driving of its driver and fell in a gorge resulting in instantaneous death of Hari Ram on the spot itself. The

claimants further pleaded that Hari Ram used to earn Rs. 6000/- per month as mason.

3. The owner and the insurer of the offending vehicle jeep contested the claim and denied their liability to pay compensation to the claimants. The owner of the jeep took the plea that the driver of the jeep was driving the jeep carefully and the accident occurred due to sudden mechanical failure and the liability to pay compensation, if any, would be of the insurance company. The insurer, on the other hand, pleaded that the driver of the jeep was not holding a valid driving licence and the jeep was being plied in breach of the policy conditions.

4. The claimants examined PW1 Uma Devi and PW2 Khim Singh in support of their claim, whereas the owner of the jeep examined DW1 Harish Upadhyaya and insurer examined DW2 Chandra Pal Singh Tomar in rebuttal.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that Hari Ram died on account of the injuries sustained by him in the motor accident on 07.03.2004; the accident occurred due to the rash and negligent driving of the driver of the jeep; and the insurer of the jeep was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 15,000/- per annum on the basis of the notional income prescribed in Second Schedule u/s 163-A of the Motor Vehicles Act. After deducting 1/3rd of the said amount as his personal expenses, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with multiplier of '16', the compensation was worked out to Rs. 1,60,000/-. The Tribunal awarded further sum of Rs. 12,000/- under other heads. Thus, a total sum of Rs. 1,72,000/- was awarded as compensation to the claimants for the death of Hari Ram in the motor accident on 07.03.2004. The Tribunal further directed the insurer of the jeep to pay interest @ 7% per annum in the event

of its failure to pay compensation to the claimants within a period of two months from the date of the Award.

7. Sri Kishore Kumar, the learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only; in awarding low compensation of Rs. 1,72,000/- only; and in not awarding any interest on the amount of compensation.

8. Sri M. K. Agarwal, the learned counsel for respondent no. 2 – New India Assurance Company Ltd., on the other hand, submitted that the compensation of Rs. 1,72,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case.

9. The findings recorded by the Tribunal that deceased Hari Ram died on account of the injuries sustained by him in the motor accident on 07.03.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle jeep; and the insurer of the jeep was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. True, the claimants pleaded that deceased Hari Ram used to earn Rs. 6000/- per month as mason. As the evidence led in that behalf was not clinching, we do not find any fault with the approach of the Tribunal in discarding the claimants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs. 15,000/- per annum requires re-examination as the same is on the lower side.

11. Deceased Hari Ram was aged about 38 years. Even working as an unskilled labourer, he could have easily earned Rs. 100/- per day. That apart, the notional income of Rs. 15,000/- in the Second Schedule was prescribed in the year 1994. If the hike in the cost of living during the period between 1994 to 2004, the year of the accident in the present case, is

taken into account the notional income of Rs. 15,000/- prescribed in the year 1994 would in the year 2004 come to Rs. 36,000/- per annum. We, therefore, propose to recompute the compensation talking the income of the deceased at Rs. 36,000/- per annum.

12. By deducting 1/3rd of Rs. 36,000/- as the personal expenses of the deceased, the claimants' dependency comes to Rs. 24,000/- per annum.

13. In a motor accident claim case, what is important is that the compensation to be awarded to the claimants should be just and proper compensation in the facts and circumstances of the case. The Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajpriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10 & 17:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

> 17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs 4,50,000 (in round figures).”

14. In the present case, the multiplier of ‘16’ selected by the Tribunal is certainly on the higher side in view of the above dictum of the Apex Court in the case of S. Rajpriya (Supra). Considering that deceased Hari Ram was aged about 38 years on the date of the accident and claimant no. 1 Smt. Uma Devi was aged about 33 years and the two children Ramesh Ram and Ganesh Ram were 15 years and 13 years, respectively, we are of the opinion that the multiplier of ‘12’ would be appropriate in the present case.

15. By multiplying the annual dependency of Rs. 24,000/- per annum with the multiplier of ‘12’, the compensation works out to Rs. 2,88,000/-. The claimants are further entitled to Rs. 5000/- for funeral expenses; Rs. 5,000/- for loss of estate; and Rs. 5000/- for loss of consortium to the widow. Thus, the claimants become entitled to receive a total amount of Rs. 3,03,000/- as compensation for the death of Hari Ram in the motor accident on 07.03.2004.

16. That Tribunal has fallen into error in not awarding any interest on the amount of compensation to the claimants. By directing only a conditional payment of interest in the event of insurer’s failure to pay the compensation to the claimants within a period of two months from the date of the Award, the claimants have been deprived of the amount of compensation, which was otherwise payable to them. With a view to avoid any possible delay in the computation of the amount of interest by the Tribunal and any possible dispute between the parties about the period for which the claimants should get interest, we deem it proper to quantify the amount of interest ourselves. The accident in the present case took place on 07.03.2004 and the claim petition was filed on 29.12.2004. The impugned Award was passed on 16.06.2006 and the amount awarded by the Tribunal must have been deposited by the insurer of the jeep by 16.08.2006. Thus, the claimants are entitled to interest on the amount of Rs. 1,72,000/- awarded by the Tribunal

for the period from 29.12.2004 to 16.08.2006 and on the enhanced amount of compensation of Rs. 1,31,000/- for the period from 29.12.2004 till the date of deposit of this amount which comes to approximately two years. Taking all the above mentioned relevant aspects of the matter into consideration, we quantify the amount of interest at Rs. 37,000/-.

17. Thus, the claimants become entitled to receive a total sum of Rs. 3,40,000- (Rupees Three Lakh Forty Thousand only) [Rs.3,03,000/- towards compensation + Rs. 37,000/- towards interest].

18. For the foregoing reasons, the appeal filed by the appellants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,72,000/- awarded by the Tribunal is enhanced to Rs. 3,03,000/- (Three Lakh Three Thousand only) with further quantified interest of Rs. 37,000/- (Rupees Thirty Seven Thousand only). The Respondent no. 2 - the New India Assurance Company Ltd. is directed to deposit the enhanced amount of compensation and the quantified interest within a period of three months from today before the concerning Claims Tribunal.

19. The amount deposited by the insurance company in satisfaction of the Award including interest, if any, shall be given due adjustment by the concerning claims Tribunal against the amount of Rs. 3,40,000/- now awarded.

20. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
14.12.2006 14.12.2006

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